IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

WP(C).No. 21999 of 2007(R)

PETITIONER:

DR.SONU.P., W/O.DR.K.K.HARIDASAN,
SONUMA HOUSE, KANNANKARA P.O., CHELANNUR,
KOZHIKODE.

BY ADV. SRI.P.K.BEHANAN
SMT.K.J.ANCY

RESPONDENTS:
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1. **THE PRINCIPAL, GOVERNMENT HOMOEOPATHIC MEDICAL COLLEGE, KOZHIKODE.**

2. **THE PRINCIPAL AND CONTROLLING OFFICER, GOVT.HOMOEOPATHIC MEDICAL COLLEGE, TRIVANDRUM.**

3. **STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

4. **KERALA PUBLIC SERVICE COMMISSION, REPRESENTED BY ITS SECRETARY, PSC OFFICE, KOZHIKODE.**

BY SR. GOVERNMENT PLEADER SRI. T.T.MUHAMOOD for R1 to R3

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE GAZETTE NOTIFICATION DTD. 26/11/02.

EXT.P2: COPY OF THE VACANCY REPORT DTD. 27/06/01 FROM THE 2ND RESPONDENT TO THE PSC.

EXT.P3: COPY OF THE PSCS RANK LIST DTD. 29/11/2005.

EXT.P4: COPY OF THE ADVICE MEMO DTD. 17/03/06 ISSUED BY THE PSC TO THE PETITIONER.

EXT.P5: COPY OF THE APPOINTMENT ORDER DTD. 6/04/06 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P6: COPY OF THE REGULARIZATION ORDER DTD. 14/07/06 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P7: COPY OF THE INCREMENT PAY SLIP DTD. 3/04/07 OF THE PETITIONER.

EXT.P8: COPY OF THE G.O.(MS) NO.232/71/PD DTD. 12/08/1971 ISSUED BY THE GOVERNMENT.

EXT.P9: COPY OF THE G.O.(MS) NO.27/05 DTD.2/2/05 ISSUED BY THE GOVERNMENT.

EXT.P10: COPY OF THE LETTER DTD. 6/01/06 ISSUED BY THE 3RD RESPONDENT TO THE 2ND RESPONDENT.

EXT.P11: COPY OF THE TERMINATION ORDER DTD. 7/06/07.

EXT.P12: COPY OF THE APPOINTMENT ORDER DTD. 5/09/94 OF DR.SUNILRAJ.P.

EXT.P13: COPY OF THE G.O.(MS) NO.86/99 DTD. 26/02/99 ISSUED BY THE GOVERNMENT.

EXT.P14: COPY OF THE PROCEEDINGS DTD. 8/06/05 ISSUED BY THE 2ND RESPONDENT.

EXT.P15: COPY OF THE REPRESENTATION DTD. 20/06/07 SUBITTED BY THE PETITIONER BEFORE THE RESPONDENT.

EXT.P16: COPY OF THE LETTER DTD. 25/06/07 REGARDING THE POSITION OF VACANCY.

EXT.P17: COPY OF THE LETTER DTD. 27/02/07 OF THE STATE PUBLIC INFORMATION OFFICER.

EXT.P18: COPY OF THE G.O.(MS) NO.378/07 DTD. 14/08/07 ISSUED BY THE GOVERNMENT.

2ND RESPONDENT'S EXHIBITS:

EXT.R2(A): GOVERNMENT ORDER (MS) NO.27/2005/H&FWD DTD. 2/02/2005.

EXT.R2(B): GOVERNMENT LETTER NO.36711/JE/2005/H&FWD DTD. 6/01/2006.

EXT.R2(C): GOVERNMENT ORDER NO.(MS) 80/99/H&FWD DTD. 26/02/99.

/TRUE COPY/

P.A.TO JUDGE

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S. SIRI JAGAN, J.

WP(C).No.21999 OF 2007 C

Dated this the 24th October, 2007.

JUDGMENT

Pursuant to Ext.P1 notification issued by the Public Service Commission, inviting applications for appointment to the post of teacher in Pharmacy, the petitioner applied. The petitioner was selected and advised as per Ext.P4 advise memo. Pursuant to that by Ext.P5 order, the petitioner was appointed as teacher in Pharmacy and posted at Government Homoeopathic Medical College, Kozhikode. By Ext.P6, the petitioner's appointment was regularised. Petitioner drew increment as per Ext.P7. Thereafter by Ext.P11 order, the Principal and Controlling Officer of Homoeeopathic Medical College, Thiruvananthapuram granted permission to Dr. K.K.Moosa, who was on long leave, to join duty as tutor in Pharmacy Department at the Govt. Homeopathic Medical College, Kozhikode and the petitioner who was the junior-most tutor working in Pharmacy Department in Governement Homoeo Medical College, Kozhikode, was ousted from service for want of vacancy. Petitioner is challenging Ext.P11 order. According to the petitioner on Dr. K.K.Moosa joining duty, the petitioner need not be ousted from

service, as admittedly there are two more vacancies available for Tutor in Pharmacy. The petitioner submits that the petitioner has been retrenched on the wrong premise that on implementation of the Central Council of Homoeopathy staff pattern the post of tutor would become a vanishing category and, therefore, the two posts of Tutor existing cannot be filled up. The petitioner submits that this reasoning is fallacious because the Central Council of Homoeopathy Staff pattern has not been implemented in the State of Kerala yet and, therefore, the State pattern still continues in which case there would be two additional posts of tutors lying vacant. To prove this, he relies on Ext.P17 information supplied by the State Public Information Officer to the effect that in the Government Homoeopathic Medical Colleges of the State the teaching staff required as per the Central Council of Homoeopathy pattern has not been implemented. He also relies on Ext.P18 G.O, which was passed on the basis of a judgment of this Court, whereby this Court have accepted the contention raised by the petitioner in that case that the Central Homoeopathy Medical Council staff pattern has not been implemented in the State of Kerala. On the strength of the above contentions the petitioner seeks the following reliefs:-

a) issue a writ of certiorari or any other writ order or direction calling for the records leading from Ext.P1 to P17 and quash Ext.P11 termination order dt. 7.6.2007 issued by the 2nd respondent Principal and Controlling Officer and also quash Ext.P9 G.O (MS) No:27/05 dt. 2.2.05 as it is totally against Ext.P8 G.O(MS) No: 232/71 dt. 12.8.71 which was upheld nu the Hon'ble High Court in the decision reported in ILR 2006 (4) Ker. Page 680.

b) issue another writ of mandamus or any other writ, order or direction directing the 2nd respondent Principal and Controlling Officer to reinstate the petitioner by cancelling Ext.P11 termination order and with full back wages.

c) issue another writ order or direction declaring that there were 2 vacancies of tutor in pharmacy including the leave vacancy of Dr. Mooza and hence rejoining of Dr. Mooza will not create a situation for termination of the petitioner on the ground of 'For want of vacancy'.

d) issue another writ order or direction declaring that Ext.P3 G.O dtd. 2.2.05 is not applicable to the regular post of tutor in which the petitioner was working after having recruited through KPSC in the regular post.

e) issue another writ order or direction declaring that the leave vacancy of Dr. Mooza who went on leave cannot be treated as 'vanished' as it is a regular vacancy.

f) issue another writ, order or direction directing the 2nd respondent Principal and Controlling Officer who is the appointing authority to reinstate the petitioner with immediate effect, back in service.

g) issue another writ, order or direction directing the 3rd respondent to consider and pass orders on Ext.P15 representation dt. 20.6.07 submitted by the petitioner

h) issue such other orders that may become necessary during the pendency of this writ petition.

i) award cost of these proceedings to the petitioner."

2. A counter affidavit has been filed by the second respondent, in which the existence of two vacancies in the post of Tutor in Pharmacy is not disputed. The only contention is that by Ext.R2(a) the Government had created two posts of Reader to which two senior Lecturers were promoted. Two Tutors were promoted to the resultant vacancies of Senior Lecturers. By Ext. R2(a) the

Government ordered that since Tutor post does not exist under Central Council of Homeopathy pattern, the resultant vacancies of Tutor in Pharmacy are treated as vanishing category.

3. From the pleadings, it is clear that the petitioner has to go out of service not because there are no vacancies to accommodate the petitioner, but only because the two vacancies available are treated as vanishing category on implementation of the Central Council of Homeopathy Staff Pattern. Therefore, if the Central Council of Homeopathy staff pattern has not been implemented in the State of Kerala, the two vacancies of tutors would continue to exist and it would not be a vanishing category. In Ext.P17 the State Public Information Officer has categorically informed the petitioner thus:-

> "In inviting your attention to the reference cited, I am to inform that in the Govt. Homoeo Medical Colleges of the state the teaching staff required as per the Central Council of Homoeopathy pattern is not implemented."

Again, in Ext.P18 in paragraph 8, the Government has held thus:-

> "Though Government have declared Tutor posts as vanishing category for satisfying CCH norms, the CCH pattern has so far not been implemented fully in the Homoeopathic Medical Colleges in the State. Also, Ext.P13 clearly shows that persons have been appointed as late as in December 2006 as Tutors in various departments of the Government Homoeopathic Medical Colleges even after the orders on vanishing category issued on 2/2/2005. This position has been taken stock of by the Hon'ble High Court also in the above judgment dated 9/4/2007 read as third paper above. Hence the argument of the

> petitioner that Tutor post is not a vanishing category so far as her selection is concerned seems sound and worth consideration as her application for the post was against a notification issued much earlier."

Therefore the Government also has accepted the fact that the Central Council of Homeopathy staff pattern has not yet been implemented in the State of Kerala. If that is accepted, then it has also to be accepted that the two vacancies of Tutors in Pharmacy referred to in Ext.R2(a) would continue to exist. There is no order by the Government abolishing those vacancies. Therefore, it goes without saying that the petitioner would be entitled to be accommodated to one of those vacancies. In the above circumstances, I am satisfied that the petitioner is entitled to succeed in this writ petition. Accordingly Ext.P11 is quashed and the respondents are directed to accommodate the petitioner in one of the vacancies of Tutor in Pharmacy referred to in Ext.R2(a). Orders in this regard shall be passed within a period of one month from the date of receipt of a copy of this judgment

The writ petition is allowed as above.

S. SIRI JAGAN
Judge

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